

Compliance Board Opinion No. 98-5
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June 18, 1998

Nathan H. Christopher, Jr., Esquire

The Open Meetings Compliance Board has considered your complaint of May 5, 1998, in which you asserted that the Salisbury City Council violated the Open Meetings Act at its meeting on August 6, 1997. Specifically, your complaint is that the Council failed to provide the advance notice of its closed session on that date and failed to indicate the topics to be discussed at the closed session. In a timely response on behalf of the City Council, Robert A. Eaton, Esquire, denied that the Council violated the Act in either respect.

I

Notice

The public must give “reasonable advance notice” of all meetings that are subject to the Act: “Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.” §10-506(a) of the State Government Article. In this case, according to Mr. Eaton, notice of the meeting to be held on Wednesday, August 6, was posted on Friday, August 1. The Compliance Board finds that the posting of a notice on the Friday before a Wednesday meeting appears to be “reasonable advance notice” of the meeting and, therefore, no violation occurred.

The Act requires that public notice “include the date, time, and place of the session,” and if the public body is planning to close all or part of the meeting, the notice is to include a statement to that effect. §10-506(b). Mr. Eaton provided a copy of the notice for the meeting held on Wednesday, August 6, 1997. The notice met the requirements of the Act for a statement of the date, time, and place of the meeting. It also indicated that a portion of the meeting “may be held in closed session ...” Indeed, the notice of the meeting went beyond the requirements of the Act by including a list of the topics that would likely be

discussed at the meeting. The Compliance Board finds that the City Council complied with the Act's requirements about the content of notice.

The Act gives a public body broad discretion concerning the method of giving notice. One permissible method is "posting or depositing the notice at a convenient public location at or near the place of the session," provided that the public has been made aware that this method is to be used. §10-506(c)(3). Moreover, a public body may provide notice "by any other reasonable method." §10-506(c)(4). Mr. Eaton informed the Compliance Board that the City Clerk had posted the notice in the Government Office Building. "The location where she posts these notices," Mr. Eaton continued, "is a convenient location in the public building that has been used for quite some time." This method appears to the Compliance Board to be a reasonable one, and the Compliance Board finds no violation of the Act in this regard.

II

Disclosure Concerning Closed Meeting

When a meeting that is subject to the Open Meetings Act is closed, the Act requires certain disclosures, both before and after the closed session. A meeting may be closed only after a recorded vote in favor of closing and after the presiding officer "make[s] a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." §10-508(d)(2). In addition, after a closed session, the minutes of the public body's next open session are to include:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under this [Act] for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

§10-509(c)(2).

The materials supplied by Mr. Eaton did not include the written statement required by §10-508(d)(2). To be sure, the minutes of the August 6 meeting reflect that a motion to close the meeting was made “to obtain legal advice,” with an appropriate citation of legal authority, and the City Council passed the motion by a recorded vote. This oral action, however, does not itself meet the Act’s requirement for the presiding officer’s “written statement.” Moreover, the written reflection of the action in the minutes does not satisfy the Act’s requirement that the written statement be made “*before* a public body meets in closed session” The Compliance Board concludes that the City Council did not comply with the “written statement” requirement of §10-508(d)(2).

The Council set forth in its next open session minutes a statement about the prior closed meeting, evidently intended to comply with §10-509(c)(2). This statement contains most of the required information, but it omits “a listing of topics of discussion ... and each action taken during the session.” Mr. Eaton suggested that the statement sufficiently lists the topic of discussion by stating that the closed session was called “to consult with counsel to obtain legal advice.” This phrase, however, is simply a restatement of the purpose of the closed session.

The Open Meetings Act requires a statement of *both* the purpose *and* the topics of discussion. The latter provision, we have stated before, affords an opportunity for “interested members of the public ... to find out the basics of what happened at a closed session.” Compliance Board Opinion No. 94-2 (May 9, 1994), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 63, 65-66. To be sure, the level of detail in the written statement required prior to a closed session and in the minutes of the ensuing open session “may preserve the confidence of information that led to the session’s being closed in the first place.” Compliance Board Opinion No. 92-5 (December 22, 1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 16, 17. Nevertheless, a public body can describe the topic related to its need for legal advice without disclosing confidences. It can say in the minutes, for example, that the topic of discussion was consideration of a settlement proposal in a lawsuit without disclosing any details about the proposal. But language that gives the public no information whatever about the topic of discussion is insufficient. Accordingly, the Compliance Board finds that the City Council violated §10-509(c)(2)(iv) of the Act.

OPEN MEETINGS COMPLIANCE BOARD

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